IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 504 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJAY ENTERPRISE, THROUGH PROPRIETOR MUKESH B PATEL

Versus

DIRECTOR OF INCOME TAX (INVESTIGATION)

Appearance:

MR PK JANI for Petitioner

MR MANISH R BHATT for Respondent No. 1, 2

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 05/03/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

#. Rule. Mr.M.R.Bhatt, learned counsel waives service of notice of rule on behalf of the respondents.

#. Having regard to the facts of the case, the petition is taken up for final disposal today.

#. By means of filing this petition under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus, or any other appropriate writ, order or direction to quash and set aside the order dated December 8, 2000 passed by the Deputy Director of Income Tax (Investigation), Unit II (1), Ahmedabad under section 132(3) of the Income Tax Act, 1961 ("Act" for short), relating to the petitioner's Current Account No.486, and Over Draft Fixed Deposit Account No.6020 with the Catholic Syrian Bank Limited, Ahmedabad. The petitioner has further prayed to direct the respondents to decide the representation dated December 13, 2000 made by the petitioner by which the petitioner has requested the respondent No.2 to lift the order passed under section 132(3) of the Act.

#. The petitioner is carrying on the business of Cheque Discounting, Shroff and Commission Agent in the name and style of Sanjay Enterprise at Ahmedabad. On December 8, 2000, search was carried out at the residential and business premises of Shri Rakesh K.Shah who is also doing the business of Shroff and Commission Agent in the name and style of M/s Shah Enterprises by the Income Tax Department. Pursuant to the search carried out against Mr.R.K.Shah, the Competent Authority under the Act has passed prohibitory order under section 132(3) of the Act against the said Mr.Shah. The petitioner received communication dated December 15, 2000 from Catholic Syrian Bank Limited informing that, operation of Current Account No.486 of the petitioner is freezed in view of the prohibitory order passed under section 132(3) of the Act. The said order is produced by the petitioner at Annexure-C to the petition. By another communication of the same date, Branch Manager of the Catholic Syrian Bank Limited informed the petitioner that, prohibitory order has been passed by the Competent Authority under section 132(3) of the Act with regard to the operation of the ODFD Account No.6020 of the petitioner with the said Bank. The said order is produced by the petitioner at Annexure-D to the petition. According to the petitioner,

he made a representation dated December 13, 2000 to the respondent No.2 requesting him to revoke prohibitory orders, but the said representation is not decided by the respondent No.2. What is claimed by the petitioner is that, the petitioner has no interest of any nature in the business of Mr.R.K.Shah, and therefore, prohibitory orders under section 132(3) of the Act could not have been passed against the petitioner. The petitioner has averred that, because of the prohibitory orders, reputation of the petitioner is considerably affected, and therefore, impugned orders should be set aside. Under the circumstances, the petitioner has filed the present petition and claimed the reliefs to which reference is made earlier.

#. On notice being served, Mr.O.P.Singh, Deputy Director of Income Tax (Investigation) Unit II (1), Ahmedabad has filed reply affidavit controverting the averments made in the petition. In the reply it is inter-alia stated that as the petitioner has not complied with the summons dated December 16, 2000 and other statutory notices, the petition should not be entertained.

#. We have heard the learned counsel for the parties.

#. The record of the case makes it manifest that the petitioner has made the representation dated December 13, 2000 requesting the respondent No.2 to lift the orders dated December 8, 2000 passed under section 132(3) of the Act and that the said representation has remained undecided till date. The question whether Mr.R.K.Shah operates through the petitioner or not need not be decided by the Court in the present petition which is filed under Article 226 of the Constitution and we are of the opinion that, interest of justice would be served if the respondent No.2 is directed to decide the representation submitted by the petitioner within the time to be stipulated in the order. Learned counsel for the petitioner, on instructions from the petitioner who is personally present in the Court, states at bar that the petitioner does not want to avail of opportunity of being heard in person, and therefore, it is clarified that, it is not necessary for the respondent No.2 to hear the petitioner personally before dealing with the representation submitted by the petitioner.

#. For the foregoing reasons, the petition is partly succeed. The respondent No.2 is directed to decide the representation dated December 13, 2000 made by the petitioner for revocation of the orders passed under section 132(3) of the Act in accordance with law as early

as possible and preferably within two weeks from today. Rule is made absolute accordingly with no order as to costs.

(J.M.Panchal,J)

(M.S.Shah,J)
(pathan)